

AG Contract No. KR00-0129TRN
ADOT ECS File No. JPA 99-110 Amendment #1
Project No.: **TEA-WLX-0(2)P**
TRACS No.: SL 441 **03D/03C**
Budget Source Item No.: _____
Section: **Willcox Train Depot Phase II
Enhancements and Landscaping**

**AMENDMENT NO. ONE (1)
INTERGOVERNMENTAL AGREEMENT**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF WILLCOX

THIS AMENDMENT, is entered into 24th day of September, 2004, Amendment One to JPA 99-110, AG Contract No.: KR00-0129TRN, filed with the Secretary of State under No. 23931 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF WILLCOX acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City

THEREFORE, in consideration of the mutual Agreements expressed herein, this Agreement is amended as follows: a) The State has agreed at the request of the City to Administer Phase II of the landscaping enhancement project (Tea-Wlx-0(2)P). The Phase II portion will comprise of landscaping enhancements for the Railroad Park for the historic train depot; b) Add the Non-Availability of Funds and the American with disabilities Act (Public Law 101-336, 42 U S C. 12101-12213) to this Agreement under the Miscellaneous Provisions.

Paragraph 7, of the Recitals has been deleted and replaced as follows:

7. The State has agreed to administer the second phase of this landscaping enhancement project (Tea-Wlx-0(2)P, JPA Agreement 99-110 at the request of the City. The State will design, construct and administer the landscaping for the Railroad Park (Phase II) and the City will be responsible for proper landscaping maintenance and electrical power for the irrigation system.

#01
NO. 23931
Filed with the Secretary of State
Date Filed: 09/24/04

Janice K. Brewer
Secretary of State

By: Timothy D. Haeneveld

Phase II of the estimated costs for the landscaping enhancement project is as follows:

Design: (SL441 03D)

Estimated Design cost	\$19,000. 00
Estimated Federal Aid Funds @ 94.3%	<u>\$17,917. 00</u>
<i>Estimated City Funds @ 5.7% for Design</i>	<i>\$ 1,083.00</i>

Construction: (SL44103C)

Estimated Project Construction Cost	\$246,590 00
Estimated Federal Aid Funds @ 94.3%	<u>\$232,534.00</u>
<i>Estimated City funds @ 5.7% for Construction</i>	<i>\$ 14,056.00</i>

*(Includes construction, construction engineering administration, and incidentals)

THE PARTIES HERETO ACKNOWLEDGE THE FOLLOWING CONDITIONS:

II. SCOPE OF WORK

Article II.1(a), (b), have been deleted and replaced with the following language:

1 The State Will:

a. Upon approval by FHWA, receipt of the City's matching funds; and with the aid and consent of the City and the FHWA, the State will proceed to advertise for, receive and open bids subject to the concurrence of FHWA and the City, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. Such Project to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation (ADOT).

b. On behalf of the City, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and request the maximum authorized Federal funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage

Article 11. 1(c), and (d) have been added to the following language:

c. No more than monthly and within (30) thirty-days upon receipt and approval of an invoice from the City, the State will reimburse the City for the 94.3% of the direct actual costs expended by the City for the Project's construction costs

d. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement

Article II. (2), (3), (4), (5), (6), has been deleted and replaced with the following language: paragraph

2. The City Will:

1. Upon execution of this Agreement, does hereby designate the State as authorized agent for the City and within (30) thirty-days upon receipt of an invoice, shall deposit funds with the State in the amount determined to be necessary to match Federal funds in the ratio required, for the estimated construction costs of the Project. The City is entirely responsible for all costs incurred by the State in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

2. Provide to State, the design plans, specifications and such other documents and services required for construction bidding and construction of the Project. Incorporate or resolve State review comments.

3. Request reimbursement from the State no more than monthly for 94.3% of the direct actual costs expended by the City for Project's construction costs, utilizing ADOT's pay request form.

4. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State.

5. Furnish all water for landscape installation during the construction phase, a Point of Connection "POC" for the irrigation system, and all water thereafter necessary to properly maintain the landscape, all at the City's expense. The City will also provide an electrical "POC" to the Project area for the purpose of providing all electrical power for the irrigation system.

6. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices; keeping all areas free of weeds; undesirable grasses and litter; applying irrigation water; furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests; pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the Project.

Article II. 1. (7) has been added to the following language:

7. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

III. MISCELLANEOUS PROVISIONS

Add 9 & 10 to Article III. as follows:

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10 Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

EXCEPT AS AMENDED herein, all other terms and conditions of the original Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF WILLCOX

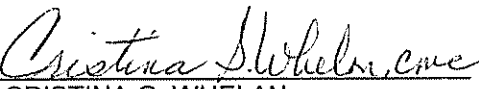
By 
MARLIN "MICK" EASTHOUSE
Mayor

STATE OF ARIZONA

Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST

By 
CRISTINA G. WHELAN
City Clerk

RESOLUTION NO. 00-07

A RESOLUTION BY THE MAYOR AND COUNCIL OF THE
CITY OF WILLCOX, COCHISE COUNTY, ARIZONA ENTERING
INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA
DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF COMPLETING
TRAIN DEPOT ENHANCEMENTS AND LANDSCAPING TO THE RAILROAD PARK

WHEREAS, the Federal Highway Administration (FHWA) allocates TEA-21 grant funding to the State of Arizona for transportation enhancement projects and historic preservation annually; and

WHEREAS, the Arizona Department of Transportation administers all TEA-21 grant funding through an application process; and

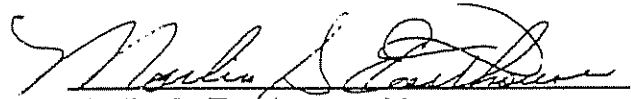
WHEREAS, the City of Willcox applied for, and was successful in receiving TEA-21 grant funding for the purpose of completing train depot enhancements, as well as landscaping in Railroad Park; and

WHEREAS, the State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into an Intergovernmental Agreement and has by Resolution resolved to enter into this agreement; and

WHEREAS, the City is empowered by the Arizona Revised Statutes 48-572 to enter into an Intergovernmental Agreement for the purpose of accomplishing the project.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Willcox, Cochise County, Arizona have determined that it is in the best interests of the City of Willcox to enter into an agreement with the Arizona Department of Transportation for the purpose of accepting enhancement funds for improvements to the Train Depot and Park.

PASSED AND ADOPTED this 28 day of March, 2000.


Marlin S. Easthouse, Mayor

ATTEST:

APPROVED AS TO FORM:


City Clerk Cristina G. Whelan, CMC


City Attorney James E. Holland

ATTORNEY APPROVAL FORM

FOR THE CITY OF WILLCOX

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF WILLCOX, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 13th day of SEPTEMBER, 2004.


Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR00-0129-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 30 September 2004

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, reading "James R. Redpath", written over a horizontal line.

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214